

A medical appliance is defined as an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See 86 Ill. Adm. Code 130.310(c). (This is a GIL.)

August 9, 2000

Dear Xxxxx:

This is in response to your letter dated April 19, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This is to request a written opinion regarding the calculation and collection of sales taxes on the residential access and mobility devices we sell here in the State. Currently we charge and pay sales tax on the equipment portion of all of our sales. However, many of our competitors do not and therefore we would like to know for sure if any of our sales are exempt from sales tax.

Our business is selling and installing a number of different types of devices to homeowners that make their homes more accessible to them or provides them with mobility within or outside their home. We purchase the equipment from 3 or 4 vendors, all of whom are from outside the State of Illinois. Brochures of each type of device are enclosed and numbered for your reference. Please comment on each device individually in your response.

1) Stairway Chairlifts (Stairlifts, stairway lifts, stairway elevators)

These devices are attached permanently to a homeowners stairway and are designed so that the user sits on the lift and travels up the stairway. The "tracks" must be custom fit to the stairs. Usually there is no other construction required to allow for the installation of the lift, but if there is, that work is typically done by another contractor under a separate contract.

2) Stairway Wheelchair Lifts (Inclined wheelchair lifts, inclined platform lifts)

These devices are attached permanently to homeowners stairway and are designed so that the user can travel up the stairway while remaining seated in their wheelchair. The "tracks" must be custom fitted to the stairway. Usually there is no other construction required to allow for the

installation of the lift, but if there is, that work is typically done by another contractor under a separate contract.

3) Vertical Wheelchair Lifts (vertical platform lift, chairlift, handicapped lift)

These devices are intended for use by wheelchair users to travel between levels in a home and are usually installed in one of two ways:

- a. Installed within the home, enclosed in 4 walls very much like an elevator. Usually extensive remodeling is required to make space for the lift. This remodeling is done under separate contract.
- b. Installed on the outside of the home, usually adjacent to a porch, deck or outside wall of the home, through which a new door has been installed to access the lift. While not as extensive as an inside lift, this type of installation still requires a concrete pad, sidewalk, electrical service and carpentry for the deck, porch or wall to accept the lift's gate or door. The carpentry, electric and concrete work is typically done by another contractor under a separate contract.

4) Residential Elevator

These devices are installed within a home, enclosed in 4 walls (hoistway or shaft). The contracting work required to build the elevator shaft is done under a separate contract. The user may be handicapped or the device may be installed as an amenity.

5) Scooters (electric scooters)

These devices are purchased by consumers to allow them to have mobility without having to walk. Although Medicare pays for scooters in some rare cases, we do not accept Medicare claims, so consumers are purchasing them from us for cash. Though some do have doctor's prescriptions, most do not. Some scooters are used mostly for indoor mobility, others for outdoors and some for both.

With all 5 types of equipment, we breakout our sales to the customer with the following line items.

Line 1:	Cost of Equipment
Line 2:	Sales tax on Equipment
Line 3:	Shipping charges (not taxed)
Line 4:	Installation or Setup charges (our "marked-up" labor charges for installing a lift or elevator or our time to "setup" a scooter we received in pieces from the manufacturer.) (not taxed)
Line 5:	Permit Fees (our "marked-up" charges for costs we incur to obtain a lift or elevator installation permit from a municipality) (not taxed)

NOTE ONE: If our way of breaking out our charges and applying sales tax on the equipment only is incorrect, please elaborate in your opinion. If "USE TAX" is involved, as we suspect it is, please define and elaborate on that concept. i.e. How to calculate it, how to pass it onto our customers, etc.

NOTE TWO: In 1-5 above, the intended user usually is the homeowner or related to the homeowner and does not have a doctor's prescription for the device. If ownership or a doctor's prescription is a modifying element in your tax opinion, please be sure to elaborate.

6) Rental Equipment

Lastly, on some occasions, we do rent scooters or straight-run stairway lifts. Must we charge tax on the monthly rental charges?

Response

Your inquiry about the possibility of Use Tax being involved in the breakdown of charges in the sale of the equipment warrants a brief overview of Illinois sales tax. Unlike the sales tax systems of many states, Illinois imposes sales tax under a two-tax system. Under the Retailers' Occupation Tax Act, an occupation tax is imposed upon persons engaged in selling tangible personal property at retail and is measured by the retailer's gross receipts. (35 ILCS 120/2; "ROT"). Under the Use Tax Act, a tax is imposed upon the privilege of using tangible personal property in Illinois purchased at retail and is measured by the cost price (retailer's selling price) of the property. (35 ILCS 105/3). This two-tax system is, in effect, a co-mingled system. The retailer is responsible for remitting his ROT liability to the Department of Revenue, but in collecting the Use Tax from the purchaser and remitting it to the Department, the retailer first reduces the Use Tax by his ROT liability, thus, reimbursing himself for his ROT liability to the state. See 86 Ill. Admin. Code Sections 130.101(d), 150.130(b), copies of which are enclosed. The taxes, therefore, complement each other, and where a purchase at retail is not subject to the ROT, it is likewise not subject to the Use Tax. The ROT rate and the Use Tax rate, collectively known as the "sales tax" rate, is currently 6.25%, except in cases where an exemption applies.

Unless an exemption is specifically provided for under the Retailers' Occupation Tax Act, the sale of tangible personal property at retail in Illinois is subject to the 6.25% state sales tax rate. Food, drugs, medicines and medical appliances are taxed at the reduced sales tax rate of 1%, plus applicable local taxes. See, 86 Ill. Admin. Code Section 130.310, enclosed.

A medical appliance is defined as an item which is intended by its manufacturer for use in directly substituting for a malfunctioning part of the body. See, Section 130.310(c)(2). Eligibility for the lower sales tax rate does not turn on whether the medical appliance is purchased pursuant to a prescription or directly by the individual. Rather, eligibility is determined by whether or not the medical appliance is intended to be used to directly substitute for a malfunctioning part of the body. Medical appliances include such items as artificial limbs, dental prostheses and orthodontic braces, crutches and orthopedic braces, wheelchairs, heart pacemakers, and dialysis machines. Corrective medical appliances such as hearing aids, glasses and contact lenses are also eligible for the lower sales tax rate. See, Section 130.310(c)(2).

As to the specific devices your company sells, stairway wheelchair lifts, stairway chairlifts and vertical chairlifts are devices which, while used to assist a person with physical disabilities, do not directly substitute for a malfunctioning part of the body. Such items do not fall within the definition of medical appliance and are, therefore, taxed at the state sales tax rate of 6.25% plus any applicable local taxes. Residential elevators are, likewise, not considered medical appliances as such items do not

directly substitute for a malfunctioning part of the body and, in some instances, are employed purely for convenience.

With regards to the electric scooters you sell, Illinois Department of Revenue rules include wheelchairs as medical appliances eligible for the lower sales tax rate, which has been interpreted to also include electric wheelchairs. See, Section 130.310(c)(2). Generally, the lower sale tax rate is not applicable to power operated vehicles. A determination of whether or not an electric scooter qualifies for the lower rate would depend on specific factual information as to how such item is used and by whom. Such determination cannot be made within the context of a General Information Letter.

It should be noted that effective August 17, 1995, the General Assembly extended the application of the lower sales tax rate to modifications made to a motor vehicle for the purpose of rendering it usable by a disabled person. See, 35 ILCS 120/2-10. Department rules state that the lower rate applies to modifications that enable disabled persons to drive a motor vehicle or that assist in the transportation of disabled persons. Modifications include, "but are not limited to, special steering, braking, shifting or acceleration equipment, or equipment which modifies the vehicle for accessibility, such as a chair lift". See, Section 130.310(e).

Where the equipment of your company is leased rather than sold to customers under a true lease agreement, sales tax is not applied to the rental charge. In a true lease there is generally no buy out provision at the close of the lease, therefore, the property remains the property of the lessor. If a buy out provisions does exist, the lease may still be considered a true lease if the buy out option is for the fair market value of the leased property. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See, 86 Ill. Adm. Code 130.220, enclosed. As the end user of the property, the lessor incurs Use Tax liability on the cost price of the property. Receipts from the rental of tangible personal property are not taxed by the State of Illinois, except in the case of automobiles leased for terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax. 35 ILCS 155/1 et seq. Since it is the lessor that incurs the tax obligation with regards to the acquisition of property to be leased, the lessor would either pay the retailer or supplier registered to collect the Use Tax and from whom the property was purchased, or self-assess and remit the Use Tax to the Department. The Use Tax may not be passed on to the lessee as a tax.

In regards to your inquiry about the application of the sales tax to the itemized listing of charges that make up the sale of your equipment, the sales tax is calculated on the basis of the retailer's gross receipts. Any costs of doing business are not deducted from the gross receipts, or selling price, when computing a retailer's ROT liability. Labor charges, whether separately stated or not, are generally considered a part of the cost of doing business and are, therefore, not deductible from the selling price when determining the sales tax liability. See 86 Ill. Admin. Code Section 130.410, enclosed. Likewise, a permit fee added to the total sale price would be considered a cost of doing business that is not deductible.

Inclusion of installation charges in the retailer's gross receipts for sales tax purposes is not dependent up whether or not the installation charges are itemized separately from the item sold, but rather upon whether or not the seller and buyer agree upon the installation charges separately from the selling price of the item sold. See, 86 Ill. Admin. Code Section 130.450, enclosed. Where the installation charge is not a part of the selling price and is instead a service charge separately contracted for

between the seller and the buyer, such charge does not need to be included in the figure upon which the seller computes the sales tax liability. See, Section 130.450(b). Charges separately listed on an invoice and initialed by the customer is sufficient to show a separate contract.

Additionally, charges designated as shipping and handling, as well as delivery or transportation charges, are not taxable if it can be shown that they are both separately contracted for and that such charges are actually reflective of the costs of shipping. In these circumstances, to the extent that shipping and handling charges exceed the costs of shipping, the charges are subject to tax. See, Ill. Adm. Code 130.415, enclosed.

The best evidence that shipping and handling, or delivery charges have been contracted for separately by purchasers and retailers are separate and distinct contracts for shipping and handling or delivery. However, documentation that demonstrates purchasers had the option of taking delivery of the property, at the sellers' location for the agreed purchase price, or having delivery made by the seller for the agreed purchase price, plus an ascertained or ascertainable delivery charge will suffice. If retailers charge customers shipping and handling or delivery charges that exceed the retailers' cost of providing the transportation or delivery, the excess is subject to tax.

It is unclear from your letter whether your company is acting in a contractor capacity under the separate contracts for affixing the wheelchair lifts and the residential elevator, therefore the following discussion provides information about a construction contractor's liability for Use Tax when permanently affixing materials to real estate.

Contractors that make improvements to real estate by taking materials off the market and permanently affixing them to real estate in Illinois owe Use Tax on the cost price of those materials. See, 86 Ill. Adm. Code 130.1940 and 130.2075, enclosed. These construction contractors do not incur Retailers' Occupation Tax liability when they permanently affix tangible personal property to real estate. If general contractors make purchases and then contract to have subcontractors do the installation, the general contractors incur Use Tax liability because they are making the purchases of such tangible personal property. If, however, subcontractors are utilized and are acting as the construction contractors, the subcontractors incur Use Tax liability on any tangible personal property that they purchase for incorporation into real estate. The transaction between the general contractors and the subcontractors is not a taxable transaction.

It is important to note that since construction contractors are the end users of the materials that they permanently affix to real estate, their customers incur no Use Tax liability and the construction contractors have no legal authority to collect the Use Tax from their customers. However, many construction contractors pass on the amount of their Use Tax liabilities to customers in the form of higher prices or by including provisions in their contracts that require customers to "reimburse" the construction contractor for his or her tax liability. Please note that this reimbursement cannot be billed to a customer as a "sales tax", but can be listed on a bill as a reimbursement of tax. The choice of whether a construction contractor requires a tax reimbursement from the customer or merely raises his or her price is a business decision on the construction contractor's part.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

With Regards,

Dana Deen Kinion
Associate Counsel

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Enc.